COX

EX PARTE OR LATE FILED **ORIGINAL**

February 3, 2003

***VIA HAND DELIVERY***

RECEIVED

FEB - 3 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte*
**MB Docket No. MB 00-277 and MM Docket Nos. 01-235, 01-317 and 00-244**
**2002 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules**

Dear Ms. Dortch:

Cox Enterprises, Inc. and its subsidiaries ('Cox") respectfully submit this letter to provide further information in response to questions raised by Commission staff in recent meetings discussing Cox's comments in the above-referenced proceeding.

First, Cox was asked whether the affiliation agreements between its local television stations and the major television networks include financial (or other) penalties if the stations preempt network programming. Attachment **A** describes the penalty provisions that are triggered if Cox stations exceed certain levels of preemption set forth in the agreements. Although the provisions vary from station to station, preemption penalties are included in every Cox affiliation agreement, regardless of the network involved. **As** the information in the chart demonstrates, the penalties include reduced compensation, reimbursement of lost revenues to the network, and termination of the affiliation agreement. Each of the penalties serves as a strong deterrent to the Cox station to carry other, non-network programming.

Second, Cox was asked to respond to network assertions that they always offer a "cash alternative" in retransmission consent negotiations with cable operators and that, therefore, any decision to carry network-owned cable programming at increased rates is a decision freely made by the cable operator that could have been avoided by paying cash for the networks' owned and operated stations ("O&Os"). Cox has been unable to find a written description of this argument in the record in this proceeding and thus does not know what, if any, documentation or other factual evidence the networks are relying upon to support these claims. Nonetheless, Cox is attaching hereto a declaration from Robert Wilson, Vice President of Programming for Cox Communications, Inc., which demonstrates that none of the networks involved in the retransmission consent negotiations described in detail in Cox's opening comments made Cox a cash offer for carriage of its O&Os. Rather, in each instance, the network insisted that *Cox* carry

0+1

No. of Copies rec'd
List ABCDE

affiliated cable programming owned by the network -- a practice that has led directly to increased cable rates and decreased customer choice in Cox's cable markets.

Moreover, the networks' argument that offering a "cash alternative" for carriage of their O&Os solves the retransmission consent problems described in Cox's comments completely misses the point. As Cox stated in its comments, the networks bargain over retransmission consent for all of their O&Os nationwide in a single negotiation – a strategy that is designed to maximize their leverage over cable operators (such as Cox) who serve customers in multiple markets also served by O&Os. Should the networks switch to a tactic of demanding inflated cash compensation for cam'age of their free over-the-air stations (in lieu of carriage of the networks' non-broadcast programming), cable consumers would still be adversely affected: programming costs, and consumers' cable rates, would continue to rise rapidly. The inflationary impact on programming costs and the reduction of consumer choice that Cox's cable customers are experiencing today are the direct result of the substantial leverage accorded to the networks through their national television station footprint. Retransmission consent is not the problem. The networks' ability and practice of misusing retransmission consent negotiations by leveraging their ownership of numerous stations in many of the country's largest television markets is the problem. And, the problem will be greatly exacerbated should the networks be permitted to expand their television station footprint even further.

We hope that the foregoing information will facilitate the Commission's analysis. Please do not hesitate to contact us if we can provide you with additional information.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter are being submitted to the Secretary's office for the above-captioned docket and copies are being provided to the Commission personnel listed below. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

Alexander V. Netchvolodoff

cc: Susan Eid, Esq.
Catherine Bohigian, Esq.
Alexis Johns, Esq.
Stacy Robinson, Esq.
Sarah Whitesell, Esq.
Ken Ferrce, Esq.
Paul Gallant, Esq.
Royce Sherlock, Esq.
Mania Baghdadi, Esq.
Linda Senecal
Qualex International